

REMARKS

Receipt of the final Office Action mailed January 7, 2004 is acknowledged. Claims 1-26 are pending in the application with claims 1, 10, 17, and 19 being independent claims.

Applicants respectfully traverse the rejection of claims 1-26 as obvious over what the Examiner has called the Applicant Admitted Prior Art (hereinafter "AAPA") in view of Pentikäinen, US 6,445,905, or as obvious over Burns et al., WO 98/14853 (hereinafter "Burns") in view of Pentikäinen, either alone or in combination with Chrabaszczyk et al., US 6,263,387 (hereinafter "Chrabaszczyk") or Shapiro et al., US 6,230,286 (hereinafter "Shapiro"). Reconsideration and withdrawal of the rejections in view the remarks provided below are respectfully requested.

Each of claims 1-26 (the pending claims) recites an apparatus or a method for use in a process control system having a controller for providing process control signals, a master link active scheduler (LAS), which operates to control the communications on a databus according to a link active schedule (including a communication timing schedule), and a backup LAS, the apparatus and method providing a new link active schedule to the backup LAS by automatically sending the new link active schedule from the master LAS to the backup LAS via the databus upon receipt of the new link active schedule by the master LAS. As indicated in the application as filed, this system and method assures that, when an operator sends a new link active schedule, including a new communication timing schedule, to the master LAS, the backup LAS is automatically updated with the new link active schedule so that the backup LAS will operate using the same link active schedule as the master LAS should the backup LAS need to take over controlling communications on the bus.

None of the cited art discloses or suggests a system or a method for use in a process control system that automatically transmits a link active schedule (or any type of communication schedule for that matter) from a master bus communication control device (e.g., a master LAS) to a backup bus communication control device (e.g., a backup LAS) via communications over the bus that the new link active schedule is to control, as recited by the pending claims.

In advance of discussing various significant points of distinction between the prior art and claimed subject matter, the applicants wish to acknowledge the Examiner's belief that the

applicants misinterpret the Office Action. The issue appears to concern whether or not the Pentikäinen reference is viewed in the proper scope as analogous prior art when comparing it to the claimed subject matter. The applicants maintain, in view of the comments below, that the Pentikäinen reference is non-analogous art.

The Examiner has generally categorized the AAPA, Burns and Pentikäinen references together as "arts of networked communication (e.g., communications in a process control network, communications in a data telecommunication system, etc.)." The applicants respectfully disagree with this generalization as its scope is much too broad, especially when considering the Pentikäinen reference in light of guidelines found in the MPEP §2141.01(a) (8th edition, 2001). In particular, the AAPA and Burns references are directed to process control communications, while Pentikäinen is directed to the much different field of telecommunications.¹

The claimed subject matter involves an apparatus and method for use in a process control system and is in a completely different endeavor than the subject matter of Pentikäinen which concerns data backup in a telecommunications system. In particular, the claimed subject matter relates to a control system that provides process control signals to control devices, a master link active scheduler (LAS), which operates to control the communications on a databus according to a link active schedule, and a backup LAS. Pentikäinen, on the other hand, does not deal with the same objective regarding process control and, as a result, fails to disclose or suggest the same or similar elements to accomplish the objectives of the applicants' claimed subject matter. Pentikäinen's failure to address the same objectives and structure render the Pentikäinen reference nonanalogous. The applicants encourage the Examiner to consider MPEP §2141.01(a), which states:

While Patent Office classification of references and the cross-references in the official search notes are some evidence of "nonanalogy" or "analogy" respectively, the court has found "the similarities and differences in structure and function of the inventions to carry far greater weight."

While the applicants view the preceding reasons sufficient to deem the Pentikäinen reference as nonanalogous prior art, in an abundance of caution, the applicants provide the

¹ In fact, the Examiner has not even alleged that Pentikäinen falls in the same primary classification or category as the other cited art, such as Burns, nor does it, as noted by differences in both the US and international classifications of these references.

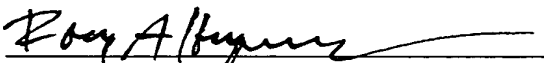
within an LAS device in a process control system. As a result, it follows that no combination of this art renders any of the pending claims obvious.

Alternatively, even if the Pentikäinen reference were to be considered analogous prior art, establishment of a *prima facie* case of obviousness requires a suggestion or motivation to modify a prior art reference or to combine two prior art references. *See, In re Oetiker*, 24 U.S.P.Q.2d 1443, 1446 (Fed. Cir. 1992); *Ex parte Clapp*, 227 U.S.P.Q. 972, 973 (Bd. Pat. App. 1985). Pentikäinen not only fails to disclose or suggest similar structure and functionality with respect to the claimed subject matter, Pentikäinen also fails to disclose or suggest any motivation to provide the structure necessary to accomplish the aforementioned functionality within the claimed subject matter. As noted above, Pentikäinen is not concerned with, and does not deal with, backing up link active schedule information of any type, much less doing so from one LAS to another LAS on a databus used for process control data flow. The Examiner's position that Pentikäinen's disclosure of backing up data in a telecommunications environment makes backing up data in the particular manner and environment recited by the pending claims amounts to a position that Pentikäinen destroys the patentability of backing up data in any possible manner in any communication system, no matter how complex the system or how different the use or purpose of the system is with respect to Pentikäinen. This clearly cannot be the case. Because none of the cited art provides a clear and particular suggestion or motivation for sending a link active schedule from one LAS device to another, much less doing so automatically, it follows that the Pentikäinen reference, alone or in combination with AAPA, Burns, Chrabaszcz or Shapiro, cannot render the claimed subject matter obvious.

For the foregoing reasons, reconsideration and withdrawal of the rejections of the claims and allowance thereof are respectfully requested. Should the Examiner wish to

discuss the foregoing, or any matter of form, in an effort to advance this application towards allowance, the Examiner is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

By: 
Roger A. Heppermann
Registration No. 37,641

MARSHALL, GERSTEIN & BORUN LLP
6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
Tel.: (312) 474-6300
Fax.: (312) 474-0448

March 8, 2004



Creation date: 07-15-2004
Indexing Officer: FMULUGETA - FIKERTE MULUGETA
Team: OIPEBackFileIndexing
Dossier: 09345809

Legal Date: 04-15-2004

No.	Doccode	Number of pages
1	CTAV	3

Total number of pages: 3

Remarks:

Order of re-scan issued on